

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

Mile High Equipment, LLC
(automatic commercial ice makers)

Case Number: 2012-SE-4501

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: July 31, 2014

Number of alleged violations: **109**

Maximum possible assessment: **\$21,800**

Proposed civil penalty: **\$21,800**

The Office of the General Counsel of the U.S. Department of Energy ("DOE") alleges that Mile High Equipment, LLC has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* ("the Act"), and 10 C.F.R. Parts 429 and 431.

Specifically, DOE alleges:

1. Mile High Equipment, LLC ("Mile High") manufactures and has manufactured a variety of automatic commercial ice makers that it distributes and has distributed in commerce in the United States of America, including, but not limited to, basic model ICE2106 FW, HW.
2. Mile High automatic commercial ice maker basic model ICE2106 FW, HW is "covered equipment" as defined in 42 U.S.C. § 6311(1)(F), 10 C.F.R. § 431.2 and 10 C.F.R. § 431.132.
3. DOE had reason to believe, based upon an assessment test conducted pursuant to 10 C.F.R. § 429.104, that basic model ICE2106 FW, HW may not meet the applicable energy conservation standard.

Distribution of Noncompliant Covered Equipment

4. Mile High has manufactured and distributed in commerce in the United States since January 1, 2010, approximately 109 units of automatic commercial ice maker basic model ICE2106 FW, HW.

5. Pursuant to the results of testing four units of Mile High automatic commercial ice maker basic model ICE2106 FW, HW at Springboard Engineering in Newton, Iowa, this model operates at an energy consumption rate of 4.379 kilowatt-hours per 100 pounds of ice (kWh/100 lbs ice), approximately nine percent greater than the 4.0 kWh/100 lbs ice standard for the tested units required by 42 U.S.C. § 6313(d)(1) and 10 C.F.R. § 431.136 for units of this basic model manufactured on or after January 1, 2010.

The following information is provided in question and answer format to help explain your legal obligations and options.

What do I do now?

DOE is offering a settlement of \$17,525 (seventeen thousand five hundred twenty-five dollars) if you submit the signed compromise agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the compromise agreement.

You have other options as described below.

What are my other options?

Within thirty (30) calendar days, you must select Option 1 or Option 2 below if you do *not* agree to DOE's settlement offer.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts de novo.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (ALJ) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the lowest fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer to the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: douglas.rawald@hq.doe.gov
By fax to: (202) 586-6734
By mail to: Doug Rawald
U.S. Department of Energy
Office of the General Counsel (GC-32)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days after receiving this notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing.

What should I include in my response?

- 1) If you wish to accept DOE's settlement offer, you should submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act (DCIA) requires all Federal agencies to obtain the TIN in any case which may give rise to a debt to the government.

How did you calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has determined that Mile High has distributed approximately 109 units of automatic commercial ice maker basic model ICE2106 FW, HW in the U.S. This number would be adjusted based on any additional information obtained if the case goes to hearing. The maximum penalty is \$200 per unit. Id. at § 429.120.

Issued by:

/signed/

Laura L. Barhydt
Assistant General Counsel for
Enforcement